

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 64

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

and

BNSF RAILWAY

BNSF 10-17-0060  
BMWE C-17-Do40-3  
Claimant: D. Garner

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STATEMENT OF CLAIM

The Organization appeals the Level S 30 Day Record Suspension discipline issued to D. Garner as a result of investigation held on Wednesday, September 21, 2016 at 0900 hours at Conference Room, BNSF Depot, 100 Cemetery Road, Guernsey, WY, 82214

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The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7602 has jurisdiction over the parties and the dispute involved herein.

In the instant matter, Claimant received a letter advising him of an investigation:

[H]as been scheduled at 0900 hours, Wednesday, August 17th, 2016, at the Conference Room, BNSF Depot, 100 Cemetery Road, Guernsey, Wyoming 82214, for the purpose of ascertaining the facts and determining your responsibility, if any, in your connection with your alleged failure to have proper authority to foul track at or near track 205 in Guernsey Yard on the Canyon Subdivision at approximately 1100 hours, on August 4th, 2016.

Following continuances, an investigation was held. Claimant was sent a letter dated July 21, 2016, which provided:

As a result of investigation held on Wednesday, September 21, 2016 at 0900 hours at Conference Room, BNSF Depot, 100 Cemetery Road, Guernsey,

WY, 82214 you are hereby assessed a Level S 30 Day Record Suspension for your failure to have proper authority to foul track while working at/or near track 205 in Guernsey Yard on the Canyon Subdivision, at approximately 1100 hours on August 4, 2016.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 6.3.3 Visual Detection of Trains and MWOR 6.3.2 Protection on Other Than Main Track.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

The Carrier maintains that its position is straightforward and outlined it in the response letter to the Organization dated January 5, 2017, which provided in pertinent part:

After reviewing the transcript it is clear that Visual Detection of Trains protection was not established by identifying one person as the lookout while the other performed work as stated by Mr. Garner in his testimony (Official Transcript Pg. 29, Line 1 – 12). Additionally, company witness Luz Esquivel testified that upon his arrival both Mr. Garner and Mr. Grubbs were performing work by applying bolts to the rail (Official Transcript Pg. 11, Lines 11 – 23). Lastly you claim the consist of cars in the track were parked and had been for some time with no power on either end. Company witness Luz Esquivel testified that the track Mr. Garner was working on was not properly locked out to prevent movement into that track (Official Transcript Pg. 7, Lines 17 – 26 and Pg. 8, Lines 1 – 17).

The Organization responds that Claimant was acting as the lookout. Further, the train did not have power, there was communication with the Yard Master, and their radio was set on speaker in order to hear all yard communications.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

The evidence established that Mr. Esquivel saw, upon his arrival, Claimant and his coworker replacing bolts in a rail joint underneath a stopped train car. Further

investigation revealed that Claimant and his coworker were not following proper safety procedure, and that Claimant was not acting as a lookout but was under the railcar observing and assisting the bolt replacement.

This Board finds that there are no procedural violations which void the discipline. On the merits, this Board finds that there is substantial evidence in the record to support the discipline issued to Claimant. The evidence establishes that the Claimant and his coworker were not following proper safety procedures. The Organization notes that Claimant was early in his career with the Carrier, did not have a lot of experience, and was not acquainted with the applicable rule due to his short tenure. The Rules are clear. This Board also finds that common sense would dictate that, when working under a train car, any employee whether new or long-term would want a proper safety briefing and work plan when working underneath a parked train. Claimant's lackadaisical approach to safety in this matter is better addressed early in his career so that he will be able to enjoy a long career.

Claim denied.



Carrier Member



Organization Member



Neutral Member

Dated: 02-04-2019